

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL ANTHONY ABELS,)	
)	
Petitioner,)	CASE NO. C04-2259-JLR-MJB
)	
v.)	SECOND ORDER FOR
)	AMENDMENT OF
ISRB et al.,)	HABEAS PETITION
)	
Respondents.)	
_____)	

Now before the Court is petitioner's motion to amend and for extension of time, indicating that petitioner would like to delete unexhausted claims 2, 5, and 6 from his habeas petition and requesting that the Court proceed with habeas review of his exhausted claims 1, 3, and 4. Dkt. #32. Having reviewed petitioner's motion, and the balance of the record, the Court hereby finds and ORDERS:

(1) Petitioner was previously notified by Order issued on April 14, 2006, that this Court has no jurisdiction over his habeas petition because it is a "mixed petition" containing both exhausted and unexhausted claims. *See* Dkt. #31. The Court ordered that within thirty (30) days from the date of the Order, petitioner must amend his petition to delete the unexhausted claim and inform the Court whether he wished to proceed with the exhausted claims or stay the petition after deletion of the unexhausted claim, to allow for exhaustion and later amendment of

SECOND ORDER FOR AMENDMENT
OF HABEAS PETITION

1 his stayed federal petition. *Id.* at 4. Petitioner was warned that failure to timely amend his
2 petition would result in a recommendation of dismissal. *Id.*

3 While the present motion makes clear petitioner's desire to proceed with his previously
4 exhausted claims 1, 3 and 4, the motion itself does not suffice to amend petitioner's habeas
5 petition. Petitioner still must file an amended habeas petition containing only the exhausted
6 claims in order for this Court to have jurisdiction for habeas review.

7 (2) Accordingly, Petitioner's motion to amend and for extension of time (Dkt. #32) is
8 GRANTED. Within twenty (20) days of the date on this Order, petitioner shall file an amended
9 habeas petition which contains only the exhausted claims.¹ If Petitioner fails to timely file an
10 amended petition, the Court will recommend that the action be dismissed.

11 (3) Petitioner's § 2241 habeas petition shall be RENOTED for June 9, 2006.

12 (4) The Clerk is directed to send a copy of the Court's 2241 petition form to
13 petitioner, and **petitioner shall use the Court's form to amend his petition.** Petitioner is
14 advised that his amended petition will replace, and not merely supplement, his previously
15 amended petition (Dkt. #7).

16 DATED this 11th day of May, 2006.

17 

18 MONICA J. BENTON
19 United States Magistrate Judge
20
21
22

23 ¹The Court notes that Respondents addressed the merits of Petitioner's properly exhausted
24 claims in its previously filed Answer and Memorandum of Authorities in Response to the Petition
for Writ of Habeas Corpus. *See* Dkt. #20.